

§ 56. Minors capable of contracting marriage. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage. En. March 21, 1872.

Cal. Rep. Cit. 75, 14; 75, 16; 79, 667; 123, 226.

§ 57. Marriage, how manifested and proved. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases. En. March 21, 1872. Am'd. 1895. 121.

Cal. Rep. Cit. 75, 15; 75, 16; 75, 51; 75, 52; 75, 63; 75, 76; 79, 667; 79, 686; 79, 694; 116, 313; 133, 527.

§ 58. Certain marriages voidable. En. March 21, 1872. Am'd. 1873-4, 185. Rep. 1905, 554.

*The provisions of this section are contained in the present section 82. The section is therefore unnecessary.—Code Commissioner's Note.

Cal. Rep. Cit. 138, 549.

Penalty for false personation in marital relations: Pen. Code, sec. 528.

See also, post, sec. 82, subd. 4.

CHAPTER II.

DIVORCE.

Article I. Nullity, §§ 82-86.

II. Dissolution, §§ 90-107.

III. Causes for Denying Divorce, §§ 111-122.

IV. General Provisions, §§ 126-143.

ARTICLE I.

NULLITY.

§ 82. Causes for annulling marriages.

§ 83. Actions therefor, when to be commenced.

§ 84. Children of annulled marriage.

§ 85. Custody of children.

§ 86. Effect of judgment of nullity.

§ 82. Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband and wife.

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable. En. March 21, 1872. Am'd. 1873-4, 187.

Cal. Rep. Cit. 88, 565; 99, 287. Subd. 2—94, 464. Subd. 5—137, 27.

Subd. 4. Consent obtained by fraud: See ante, sec. 58.

Subd. 5. Consent obtained by force: See ante, sec. 58.

Subd. 6. Physical incapacity: See ante, sec. 58.

§ 83. Actions therefor, when to be commenced. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision five: by the injured party, within four years after the marriage.

6. For causes mentioned in subdivision six: by the injured party, within four years after the marriage. En. March 21, 1872. Am'd. 1873-4, 188.

§ 84. Children of annulled marriages. A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment. En. March 21, 1872. Am'd. 1905, 555.

The design of the amendment is to make the rule declared in this section applicable to all judgments adjudging marriage null, the present section applying only to cases where a marriage is annulled on the ground that a former husband or wife was living.—Code Commissioner's Note.

Cal. Rep. Cit. 57, 491.

Legitimate children, who are: See secs. 193-195. See, also, when the question arises in divorce cases for adultery, secs. 144, 145.

§ 85. Custody of children. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party. En. March 21, 1872.

Custody of children in divorce causes: See post, sec. 138.

§ 86. Effect of judgment of nullity. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them. En. March 21, 1872.

Effect of decree for divorce: See post, sec. 91.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

- § 80. Marriage, how dissolved.
- § 91. Effect of divorce.
- § 92. Causes for divorce.
- § 93. Adultery defined.
- § 94. Extreme cruelty, what.
- § 95. Desertion, what.
- § 96. Desertion, how manifested.
- § 97. In case of stratagem or fraud, who commits desertion.
- § 98. In case of cruelty, where one party leaves the other, who commits desertion.
- § 99. Separation by consent not desertion.
- § 100. Absence becomes desertion, when.
- § 101. Consent to separate revocable.
- § 102. Desertion, how cured. Effect of refusing condonation.
- § 103. Wife must abide by husband's selection of home or it is desertion on her part.
- § 104. If the place is unfit, and wife refuses to conform, it is desertion — the husband.
- § 105. Willful neglect, what.
- § 106. Habitual intemperance, what.
- § 107. Habitual intemperance, etc., for one year.

§ 90. Marriage, how dissolved. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 137, 27; 137, 134; 137, 137; 137, 138; 137, 139; 137, 144.

§ 91. Effect of divorce. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 137, 133; 137, 134; 137, 137; 137, 138; 137, 139; 137, 144; 140, 488.

§ 92. Causes for divorce. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony. En. March 21, 1872. Am'd. 1873-4, 189.

Cal. Rep. Cit. 51, 544; 74, 492; 85, 256; 126, 128. Subd. 3—135, 397.

Alimony: See post, secs. 136 et seq.

Community property, and its disposition under proceedings for divorce: See post, secs. 141 et seq.

FAMILY CODE - FAM

DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION [2000 - 2452]

(Division 6 enacted by Stats. 1992, Ch. 162, Sec. 10.)

PART 1. GENERAL PROVISIONS [2000 – 2129]

PART 2. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE [2200 - 2255]

(Part 2 enacted by Stats. 1992, Ch. 162, Sec. 10.)

PART 3. DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION [2300 – 2452]

DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION [2000 - 2452]

PART 2. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE [2200 - 2255]

CHAPTER 1. Void Marriage [2200 - 2201]

(Chapter 1 enacted by Stats. 1992, Ch. 162, Sec. 10.)

[2200.](#)

Marriages between parents and children, ancestors and descendants of every degree, and between siblings of the half as well as the whole blood, and between uncles or aunts and nieces or nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

(Amended by Stats. 2014, Ch. 82, Sec. 23. (SB 1306) Effective January 1, 2015.)

[2201.](#)

(a) A subsequent marriage contracted by a person during the life of his or her former spouse, with a person other than the former spouse, is illegal and void, unless:

(1) The former marriage has been dissolved or adjudged a nullity before the date of the subsequent marriage.

(2) The former spouse (A) is absent, and not known to the person to be living for the period of five successive years immediately preceding the subsequent marriage, or (B) is generally reputed or believed by the person to be dead at the time the subsequent marriage was contracted.

(b) In either of the cases described in paragraph (2) of subdivision (a), the subsequent marriage is valid until its nullity is adjudged pursuant to subdivision (b) of Section 2210.

(Amended by Stats. 2014, Ch. 82, Sec. 24. (SB 1306) Effective January 1, 2015.)

CHAPTER 2. Voidable Marriage [2210 - 2212]

(Chapter 2 enacted by Stats. 1992, Ch. 162, Sec. 10.)

[2210.](#)

A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was under 18 years of age, unless the party entered into the marriage pursuant to Section 302 or 303.

(b) The spouse of either party was living and the marriage with that spouse was then in force and that spouse (1) was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought or (2) was generally reputed or believed by the party commencing the proceeding to be dead at the time the subsequent marriage was contracted.

(c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as his or her spouse.

(d) The consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as his or her spouse.

(e) The consent of either party was obtained by force, unless the party whose consent was obtained by force afterwards freely cohabited with the other as his or her spouse.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage state, and that incapacity continues, and appears to be incurable.

(Amended by Stats. 2018, Ch. 660, Sec. 8. (SB 273) Effective January 1, 2019.)

[2211.](#)

A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, must be commenced within the periods and by the parties, as follows:

(a) For causes mentioned in subdivision (a) of Section 2210, by any of the following:

(1) The party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent.

(2) A parent, guardian, conservator, or other person having charge of the minor, at any time before the married minor has arrived at the age of legal consent.

(b) For causes mentioned in subdivision (b) of Section 2210, by either of the following:

(1) Either party during the life of the other.

(2) The former spouse.

(c) For causes mentioned in subdivision (c) of Section 2210, by the party injured, or by a relative or conservator of the party of unsound mind, at any time before the death of either party.

(d) For causes mentioned in subdivision (d) of Section 2210, by the party whose consent was obtained by fraud, within four years after the discovery of the facts constituting the fraud.

(e) For causes mentioned in subdivision (e) of Section 2210, by the party whose consent was obtained by force, within four years after the marriage.

(f) For causes mentioned in subdivision (f) of Section 2210, by the injured party, within four years after the marriage.

(Amended by Stats. 2014, Ch. 82, Sec. 26. (SB 1306) Effective January 1, 2015.)

2212.

(a) The effect of a judgment of nullity of marriage is to restore the parties to the status of unmarried persons.

(b) A judgment of nullity of marriage is conclusive only as to the parties to the proceeding and those claiming under them.

(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

CHAPTER 3. Procedural Provisions [2250 - 2255]

(Chapter 3 enacted by Stats. 1992, Ch. 162, Sec. 10.)

2250.

(a) A proceeding based on void or voidable marriage is commenced by filing a petition entitled "In re the marriage of ____ and ____" which shall state that it is a petition for a judgment of nullity of the marriage.

(b) A copy of the petition together with a copy of a summons in form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

2251.

(a) If a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall:

(1) Declare the party or parties, who believed in good faith that the marriage was valid, to have the status of a putative spouse.

(2) If the division of property is in issue, divide, in accordance with Division 7 (commencing with Section 2500), that property acquired during the union that would have been community property or quasi-community property if the union had not been void or voidable, only upon request of a party who is declared a putative spouse under paragraph (1). This property is known as "quasi-marital property."

(b) If the court expressly reserves jurisdiction, it may make the property division at a time after the judgment.

(Amended by Stats. 2015, Ch. 196, Sec. 1. (AB 380) Effective January 1, 2016.)

2252.

The property divided pursuant to Section 2251 is liable for debts of the parties to the same extent as if the property had been community property or quasi-community property.
(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

2253.

In a proceeding under this part, custody of the children shall be determined according to Division 8 (commencing with Section 3000).
(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

2254.

The court may, during the pendency of a proceeding for nullity of marriage or upon judgment of nullity of marriage, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable if the party for whose benefit the order is made is found to be a putative spouse.
(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

2255.

The court may grant attorney's fees and costs in accordance with Chapter 3.5 (commencing with Section 2030) of Part 1 in proceedings to have the marriage adjudged void and in those proceedings based upon voidable marriage in which the party applying for attorney's fees and costs is found to be innocent of fraud or wrongdoing in inducing or entering into the marriage, and free from knowledge of the then existence of any prior marriage or other impediment to the contracting of the marriage for which a judgment of nullity is sought.
(Amended by Stats. 1993, Ch. 219, Sec. 108.5. Effective January 1, 1994.)

PART 3. DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION [2300 – 2452]